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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

## Notification

The 22nd October, 2019

**No. 13/1/9677-HII(2)-2019/17251.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 29/2014, dated 30.08.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

SANJAY S/O SHRI VALIK MANDAL, HOUSE NO. 2625/C, RAM DARBAR COLONY, PHASE—II, CHANDIGARH (Workman)

AND

AJIT RUBBER MILLS, PLOT NO. 24/9, INDUSTRIAL AREA, PHASE—II, CHANDIGARH THROUGH ITS PROPRIETOR/OCCUPIER & MANAGER (Management)

## AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed by the management with effect from 01.07.2000 as Helper in the factory and worked continuously upto 26.03.2013. The management was entirely satisfied with his work & conduct. He was drawing wages of ₹ 5,300/- per month but deserves to get ₹ 7,502/- according to law. The management verbally committed to provide appointment letter, attendance card, wages slips, designation letter, leave card and provident fund slips, bonus, 14 days sick leaves, 14 days casual leaves, 15 days earned leaves with wages and over time allowance will be double of wages. But after months the management refused the same and told that there is no practice like this type for their employees. Then the workman requested to the principal employer but he also not heard his legal requests. The management covered the workman under ESI Act and shown the date of entry in ESI records as 03.03.2010 instead of 01.07.2000. On 26.03.2013 at 8:30 A.M. the workman started his routine duty and Shri Gourav Saini came and directed the workman to operate roller machine. The workman requested him that he is a Helper and without training he is unable to operate the roller machine. Thereafter the workman was forced to operate the roller machine and Shri Gourav Saini told that these are compulsory order of his father Shri Balbir Singh Saini. The workman under the fear of unemployment started working on roller machine according to the direction of

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Shri Gourav Saini and Shri Balbir Singh Saini at about 11:00 A.M. the workman met with an accident when he was operating rolling machine, as a result of which his right hand four fingers and thumb has amputated badly. After the accident the workman brought in GMCH, Sector 32, Chandigarh by Shri Balbir Singh Saini, Shri Gourav Saini and Shri Dinesh Radihar after the procedure of emergency case he was referred to PGI where he got treatment. Treatment and medical rest days as advised by the Doctors all information given to the management. The ESI Doctors on 07.08.2013 issued fitness certificate and advised light duty. Original copy of the same was deposited in the office of ESI Local Office, Chandigarh and second copy handed over to the management office on the same day. The management's office kept the same and told that he is handicapped and his working capacity has lost so they cannot give him employment now. The workman visited the office and requested verbally or in writing to the officer to take him back in service but the management did not hear his genuine and legal requests. The workman raised a demand notice under Section 2-A of the ID Act in the office of the Conciliation Officer, Union Territory, Chandigarh with request to initiate conciliation proceedings in the dispute and first date was fixed for 10.09.2013. The conciliation could not be materialised within stipulated time of 45 days so the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory, Chandigarh issued a certificate to approach this Tribunal/Court for adjudication of the dispute. The workman successfully performed his duty and the management was entirely satisfied with his work & conduct. The management had not issued any memo, charge sheet or conducted any inquiry in any matter before termination till date as the workman is not at fault in manner. This is gross violation of principles of natural justice. The management has not paid or offered notice pay in lieu of notice or compensation to the workman in violation of provisions of Section 25-F of the ID Act. Job of the workman still exists and junior to the workmen were retained in service and fresh workmen were appointed in violation of provisions of Section 25-G & 25-H of the ID Act. Details of legal dues of the workman are as under :—

Sr. No.	Heads	Amount (in Rs.)
1	Total attendance 01.03.2013 to 26.03.2013	6,500.00
2	Extra time (worked as over time 89 hours)	5,562.50
3	Unavailed leaves with wages leave (30 days)	7,500.00
4	Minimum Bonus @ 8.33% of 01.04.2010 to 26.03.2013	15,300.00
5	Gratuity amount Section 4 of the Payment of Gratuity Act 12 years (8 months 26 days)	56,250.00
6	Compensation according to Section 25-F of the ID Act	48,750.00
7	Notice pay according to Section 25-F of the ID Act	7,500.00
TOTAL PAYABLE AMOUNT		1,47,362.00

(One Lac Forty Seven Thousand Three Hundred Sixty Two Rupees)

The workman is poor and he was fully dependent upon the management wages and has no source of income except wages received from the management. The management had not offered or paid any type of financial benefits neither assured re-employment to the workman. Termination order is in violation of all mandatory provisions of the ID Act. Ultimately, it is prayed that the workman be reinstated into service with continuity of service, full back wages and all other applicable benefits.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the demand notice is addressed to M/s Ajit Rubber Mill, Occupier and Manager whereas the management is a Proprietary concern. The workman had taken advance of ₹ 53,077/- before, during and after the accident, for personal and domestic needs, medical expenses and for post operation care expenses etc. and with the intention of not refunding the amount, even after his treatment was over, he started remaining wilfully

un-authorisedly absent from duty and did not join in spite of communications. On merits, it is pleaded that the workman was appointed as Helper with effect from 03.03.2010 he was issued letter of appointment, his last drawn wages were ₹ 7,000/- per month. The workman un-authorisedly fiddled with machine and in the process caused accident. The management along with his son took him to GMCH, Sector 32, Chandigarh for his treatment and other expenses and subsequently he was further treated in PGI. The workman in spite of his having taken advances earlier before the accident also, was liberally given advances after the accident on his day to day asking for his personal, domestic as well as for medicines, treatment and post treatment expenses etc. but after being discharged and after the treatment, he did not turn up for duty neither gave or sent any alleged fitness certificate. The management when came to know that the workman had been discharged but have not joined duty, sent communications, asking him to join duty but he did not join duty nor sent any reply nor joined duty then it appeared to the management that the workman is not joining duty to avoid refunding the amount of ₹ 53,077/- taken as loan on different dates. The workman is employed elsewhere. Instead of joining duty and refunding amount taken as advance gradually from his wages, he had filed false and fabricated demand notice with *mala fide* intentions of avoiding refunding the same. The workman was admittedly working as Helper. Neither he had any experience of working as turner nor he ever worked as turner. He was never asked to operate any machine. No inquiry or compliance of provisions of Section 25-F, 25-G & 25-H of the ID Act is required as his service were never terminated. The wages of the workman from 01.03.2013 to 26.03.2013 are payable at the applicable rate of minimum wages, which he can collect from the management. Other amounts claimed are not covered under sub-section (2) of Section 2-A of the ID Act. Other averments of the case of the workman were denied and ultimately, it is prayed that the present industrial be decided against the workman and in favour of the management.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1 and closed the evidence. On the other hand, the management examined Shri Balbir Singh Saini—Proprietor as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

#### **ISSUE No. 1 :**

7. Onus to prove this issue was on the workman and to discharge the same he deposed that he was appointed by the management with effect from 01.07.2000 as Helper and worked continuously upto 26.03.2013. The management was entirely satisfied with his work & conduct. He was drawing wages of ₹ 5,300/- per month though he deserves to get ₹ 7,502/- according to law. The management verbally committed to provide appointment letter, attendance card, wages slips, designation letter, leave card, provident fund slips, bonus, 14 days sick leaves, 14 days casual leaves, 15 days earned leaves with wages and overtime allowance will be double of wages but later on refused the same by saying that there is no practice like this type for their employees. The management covered him under ESI Act and shown the date of entry in ESI records as 03.03.2010 instead of 01.07.2000. He further deposed that on 26.03.2013 at 8:30 A.M. as a route he reported for duty and Shri Gourav Saini came and directed him to operate roller machine, upon which he requested that he is helper and without training he is unable to operate the roller machine. Thereafter he was forced to operate the roller machine and Shri Gourav Saini told that there are compulsory orders of his father Shri Balbir Singh Saini. Under the fear of unemployment he started working on Roller Machine according to the direction of Shri Gourav Saini and Shri Balbir Singh and at about 11:00 A.M. met with accident while operating rolling



machine as result of which his right hand four fingers and thumb had amputated badly. After accident he was taken to GMCH, Sector 32, Chandigarh by Shri Balbir Singh Saini, Shri Gourav Saini and Shri Dinesh Padihar after the procedure of emergency case he was referred to PGI where he got treatment. He further deposed that ESI Doctors on 07.08.2013 issued fitness certificate and advised light duty, original of which is with office of ESI, Local Office, Chandigarh and second copy handed over to the management office same day. The management kept the same and told him that he is handicapped, his working capacity has lost so they cannot give him employment now. Thereafter he several times visited the management factory and requested verbally or in writing to the management to take him back but the management did not hear his genuine request. The management had violated the principles of natural justice, Section 25-F, Section 25-G and 25-H of the ID Act.

8. Learned representative for the workman has argued that the workman was working as Helper in the factory since 01.07.2000 and worked continuously upto 26.03.2013. He is punctual and honest and the management is entire satisfied with his work. He was drawing wages of ₹ 5,300/- per month but he deserves ₹ 7,502/- per month as wages. No appointment letter, attendance card, wages slips, designation letter, leave card etc. issued to the workman. He was directed to operator roller machine without training hence the workman met with an accident as a result of which his right hand four figures and thumb has amputated badly and he remained admit in PGI for treatment. He further argued that the workman requested the management to take back him in service after getting fitness certificate but the management had not heard his genuine request. He further argued that the management had not paid any notice pay. He is also entitled for unpaid earned wages from 01.03.2013 to 26.03.2013 and extra time work and un-availed leave with leave wages, bonus, gratuity, compensation, notice pay. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, learned representative for the management has examined Shri Balbir Singh – Proprietor as MW1, who deposed that the workman was appointed as Helper on 03.03.2010, which is proved from ESI card Exhibit ‘W4’ and he admitted in the cross-examination that he had no proof that he had 01.07.2000. The workman was never ordered anyone to operate the roller machine as he was not trained. He was deployed on the duty of Helper only. No leave encashment is due to the workman. The workman had not done over time. The workman was never terminated rather he himself chose not to join duties. All the allegations/pleas of the workman are baseless.

10. Learned representative for the management has argued that the workman was never terminated by the management rather he has himself did not turn up after the accident. He was not supposed to do machine work. He never worked for over time. He is not entitled for gratuity by this Court. He has already taking pension. He refer to cross-examination of the workman in which he stated that he is not having any proof of termination. He is not having proof that he was asked to operate roller machine. Rather the workman had admitted that the Proprietor took him to GMCH, Sector 32, Chandigarh and he admitted that he is not having any prove that he had worked over time. So the management did not terminate the services of the workman and it was the workman who chooses not to join duty. Further the management is ready to give his unpaid earned wages and decided not to take refund of the amount spent on the workman during his medical treatment. He prayed for dismissal of the claim of the workman.

11. After carefully considering the rival contention of both the sides, it is admitted by the parties that the workman was working with the management as Helper and worked continuously upto 26.03.2013 and as per the averments of the workman that the management had shown the date of entry in ESI 03.03.2010 instead of 01.07.2000. As per entry in ESI the date is mentioned 03.03.2010 but it is stated by the workman during the cross-examination and he had not sent any communication to ESI asking them to amend his date of entry as he has joined on 01.07.2000 and he said voluntarily that ESI card was made in 2010. Hence, he has not any prove to show that he has joined on 01.07.2000. But as per statement of the claim the workman was verbally appointed on 01.07.2000 as Helper.

12. It is admitted fact that the workman got injured during the course of duty hours. Admittedly he was engaged as Helper. As per averment of the workman he was forced to do machine work without training. He requested the respondent that he is Helper and without training he is unable to operate the roller machine but he was forced to operate the roller machine work without training as these are the compulsory orders of the management but the management is denying this fact. It is proved on record that the workman met with accident during the course of operating roller machine and copy of accident report clearly shown that his right hand four fingers and thumb has amputated badly. Meaning thereby he was operating the roller machine and he himself is not in position to risk to operate the roller machine without the consent of the urgent and as per orders of management he was to operate the roller machine under his supervision and it was clear cut fault of the owner of the management as without imparting training to the Helper they ordered the workman to operate the roller machine and accident caused due to negligence of the owner. Admittedly the management took the workman to hospital where he was treated and remained admitted.

13. As regards the joining of the duties and termination is concerned, as per averments of the workman he went to management after fitness but the management refused to join him as Helper as he has become handicapped and his working capacity has lost. Admittedly no termination letter was sent to the workman by the management and there is no proof on record that the worker had approached the management to do his duties again but admittedly there is a huge loss to the workman. He is youngman and his amputation has darken his bright future and he has to make both ends meet for his family.

14. As regard the pension of the workman is concerned as alleged by the management, it is obvious that after sitting idle he has right to take pension. So far as the gratuity amount is concerned this Court has no jurisdiction to grant gratuity. Further extra work done by the workman is concerned it has come in evidence that there is no shift system in the management and there is only eight hours duties. The workman has himself admitted that it is correct that he had not attached any details of any over time done or any un-availed leave.

15. As far as reinstatement of the workman is concerned, Shri Balbir Singh, MW1 who stated in cross-examination that the factory is closed on 01.01.2018 so it is impossible for the management to take back the workman on duty. But in order to meet ends of justice the workman should be compensated with compensation as the workman had worked with the management for long time. So the workman is held entitled for unpaid earned wages for the period 01.03.2013 to 26.03.2013 *plus* compensation of ₹ 3,00,000/-. Accordingly, this issue is partly decided in favour of the workman and against the management.

**RELIEF :**

16. In the light of findings on the issue above, this industrial dispute is partly allowed. The workman is entitled for unpaid earned wages for the period 01.03.2013 to 26.03.2013 and compensation of ₹ 3,00,000/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

The 30.08.2019.

## CHANDIGARH ADMINISTRATION

## LABOUR DEPARTMENT

**Notification**

The 22nd October, 2019

**No. 13/1/9678-HII(2)-2019/17245.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 10/2016, dated 01.10.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

RAHUL MORYA S/O SHRI RAM ADHAR, R/O HOUSE NO. 1364, SECTOR 33-C, UNION TERRITORY, CHANDIGARH (Workman)

AND

EMM PEE MOTORS LIMITED, 177-H, INDUSTRIAL AREA, PHASE-I, UNION TERRITORY, CHANDIGARH THROUGH ITS MANAGING DIRECTOR (Management)

## AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he joined the services of the management with effect from 25.09.2012 and worked continuously without any interruption or break in service till 03.10.2015 when his services were terminated by the General Manager/management by passing verbal orders of termination on 03.10.2015. He was working as Washing Supervisor and was drawing '8,746/-per month. Verbal order of retrenchment was passed in violation of provisions of Section 25-F of the ID Act. The management had retained his juniors in service in violation of Section 25-G of the ID Act.

3. The management contested the case of the workman and filed written statement that the services of the workman were never terminated by the management or by the General Manager by passing any verbal orders. As per Clause 6 of the appointment letter issued to the workman, the General Manager had told him to perform his duties at our upcoming Mandigobindgarh dealership with effect from 03.10.2015 where services related to his skills were required but he neither refused to join his duties at the assigned location nor inform any of his superior or any body else about his decision.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Dhanvir Singh – Senior Manager (HR) as MW1 and Shri Vinay Kumar – Assistant Manager as MW2.

6. During the pendency of the present industrial dispute, the parties settled their dispute amicably. Learned representative for the management made the following statement :—

*"The management is ready to reinstate the workman in the service with continuity of service and without back wages. He may be directed to report for duty on or before 07.10.2019."*

The workman also made the following statement :—

*“I have heard the statement of the ld. representative for the management and I am ready to accept reinstatement with continuity of service and without back wages. The present reference may be disposed of as finally settled and award may be passed accordingly.”*

Accordingly, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

The 01.10.2019.

## CHANDIGARH ADMINISTRATION

### LABOUR DEPARTMENT

#### Notification

The 2nd December, 2019

**No. 13/1/9680-HII(2)-2019/19301.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 15/2015, dated 23.10.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

OM PARKASH, S/O SHRI RAMPHAL, R/O 756, NEW INDRA COLONY, MANIMAJRA, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. MUNICIPAL CORPORATION, UNION TERRITORY, CHANDIGARH THROUGH ITS COMMISSIONER.

2. CHIEF ENGINEER (PUBLIC HEALTH), MUNICIPAL CORPORATION, UNION TERRITORY, CHANDIGARH (Management)

#### AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he joined the management as Beldar on daily wage basis on 01.07.1997 to 30.04.2000 with Sub-division No.14 of Division No.4 of Public Health Division and again with effect from 05.09.2000 to 30.06.2001 with Sub-division No.8 of Division No.2 of Public Health Division. Thereafter services of the workman were terminated illegally without any notice. At the time of illegal termination of the workman he had completed more than 240 days within preceding 12 calendar months and had acquired the right to continue in service as per Section 25-F of the ID Act. Work was in existence at the time when the services of the workman were terminated so termination of the workman was illegal. The management had not issued any notice and pay in lieu of notice as well as retrenchment compensation at the time of



termination of services of the workman so termination was in violation of Section 25-F of the ID Act. Termination was also in violation of Section 25-G of the ID Act as juniors were retained while services of the workman were terminated. Juniors namely Sukh Raj S/o Shri Sarwan Singh, Mohinder Kumar S/o Shri Bal Mukand and Satish Kumar were retained in service and subsequently their services were regularised and they are still in service as regular employee. Action of the management is also illegal and in violation of Section 25-H of the ID Act as the management had given appointment to many persons without giving any opportunity to the workman to join his duties. No permission of the competent authority was sought before terminating the services of the workman. Earlier the workman challenged the illegal action of the management by serving demand notice dated 17.10.2002 which was referred to this Court for adjudication and registered as IDR No.583 of 2003. The case of the workman was being pursued by Shri O. P. Sharma, authorised representative of the workman. Shri O. P. Sharma expired in the year 2007 but the workman could not know about his death. Due to the death of Shri O. P. Sharma the workman was proceeded *ex-parte* and ultimately reference was dismissed in the absence of the workman for non-prosecution. Meanwhile the workman met with accident and remained confined to bed so he could not peruse his case. As such the workman had served fresh demand notice. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages along with interest at the rate 12% per annum.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the award dated 03.03.2008 between the parties on the same issue with respect to termination of services of the workman has become final and has never been challenged by the workman. Reference No.583 of 2003 has been answered in the negative since the workman had failed to produce any evidence in support of his contentions. On merits, it is pleaded that the workman had joined in the office of Municipal Corporation as Beldar. In the preceding one year from the date of his alleged termination, the workman had not completed 240 days. The workman had worked for following period :—

	<u>Period</u>	<u>No. of Days</u>
1998	May 1998	31
	June 1998	28
1999	January 1999	19
	February 1999	28
	March 1999	31
2000	April 2000	30
	June 2000	30
	October 2000	24
	November 2000	30
2001	January 2001	31
	February 2001	22
	April 2001	14
	November 2000	30

The workman has no cause of action as his reference already stands declined and the award passed in that reference has not been challenged by the workman as such the present reference is hit by principle of resjudicata. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.



4. The workman filed rejoinder reiterating the averment of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the reference is bad on account of res-judicata ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman examined Shri Sukhwinder Singh—Junior Engineer (Additional Charge), office of Municipal Corporation, Public Health Sub-division No.8, now Sub-division No.19, Union Territory, Chandigarh as AW1. The workman also examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management did not lead any evidence. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

#### ISSUE No. 1 :

7. Onus to prove this issue was on the management. The management has not led any evidence to prove this issue. Learned representative for the management simply argued that the matter has already been decided *vide* award dated 03.03.2008 between the same parties passed in reference No. reference No.583 of 2003 and the workman never challenged the award dated 03.03.2008 *vide* which the reference was answered in negative as the workman has failed to produce any evidence. Hence, the present reference is bad for *resjudicata* and not maintainable in the present form.

8. On the other hand, learned representative for the workman has vehemently argued that the case of the workman was earlier pursued by Shri O. P. Sharma, authorised representative who expire in 2007 and due to death of Shri O. P. Sharma the workman was proceeded against *ex-parte* and ultimately, the reference was dismissed in the absence of workman for non-prosecution. Thereafter the workman met with an accident and remained confined to bed therefore he could not pursue his case. Hence he filed the fresh demand notice. He has placed reliance upon the citation **Virendra Bhandari Versus Rajasthan State Road Transport Corporation & Others, 2002(9) SCC 200** and argued that the present reference is maintainable and no *resjudicata* is applicable in the present reference.

9. After giving my careful consideration to the rival contentions of both the sides, I find it is nowhere disputed that earlier reference of the workman was decided but the ground taken by the workman is that his earlier authorised representative has expired in 2007 and he could not know about his death and thereafter he met with accident and confined to bed and he placed reliance of authority **Virendra Bhandari Versus Rajasthan State Road Transport Corporation & Others** (*supra*). As regards the maintainability of the present industrial dispute as well as applicability of *resjudicata* is concerned it is crystal clear that the award dated 03.03.2008 was passed by the then Presiding Officer of this Tribunal/Court in Reference No.583 of 2003 and in that reference the workman was proceeded against *ex-parte*. No doubt that reference has been decided issue-wise but no evidence has been led by the workman in that reference and that award has been passed with findings that the workman had led any evidence. Learned representative for the workman has relied upon authority **Virendra Bhandari Versus Rajasthan State Road Transport Corporation & Others** (*supra*) wherein Hon'ble Supreme Court of India held that in the absence of matter being adjudicated on merits on earlier occasion, second reference was maintainable. Accordingly, in the light of observations made by Hon'ble Supreme Court of India in authority relied upon by learned representative for the workman, the principle of *resjudicata* is not applicable in the present case. However, the matter of maintainability of the reference is concerned, admittedly the award passed in the earlier reference of the workman in the year 2008

whereas the demand notice, the basis of the present industrial dispute reference, has been filed in the year 2014 i.e. that is after gap of six years. No ground has been mentioned for delay and latches. It is simple version of the workman that he met with accident and remained confined to bed but no medical record was placed on record to prove the same. So there is no reasonable and justified explanation has been putforth by the workman to explain the delay in raising the present industrial dispute. Hence, reliance is placed upon authority **Ratanben Ramabhai Vankar Versus District Development Officer & 2, LPA No. 182 of 2017 decided on 29.06.2017 by Hon'ble Gujarat High Court.** The present reference is not maintainable on the ground of delay. This issue is decided against the workman on the ground of delay & latches.

#### ISSUE NO. 2 :

10. As while deciding issue No. 1 has been decided that the present industrial dispute is not maintainable on the ground of unexplained delay so this issue has become redundant.

#### RELIEF :

11. In the light of findings on the issue No. 1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 23.10.2019.

(Sd.) . . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

#### CHANDIGARH ADMINISTRATION

#### LABOUR DEPARTMENT

#### Notification

The 31st December, 2019

**No. 13/1/9696-HII(2)-2019/21356.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 91/2016, dated 14.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

HARINDER SINGH S/O SHRI BAKHTAWAR SINGH R/O VILLAGE SAMPALI, PO PAMOUR, TEHSIL BASSI PATHANA, DISTRICT FATEHGARH SAHIB, PUNJAB SINCE DECEASED THROUGH HIS LEGAL REPRESENTATIVE

1. CHARANJIT KAUR—WIFE

2. GURPREET SINGH—SON BOTH R/O VILLAGE SAMPALI, PO PAMOUR, TEHSIL BASSI PATHANA, DISTRICT FATEHGARH SAHIB, PUNJAB.

3. KULDEEP KAUR W/O SHRI BAHADUR SINGH, D/O LATE SHRI HARINDER SINGH, R/O VILLAGE CHHANJHERI, MOHALI, PUNJAB.

4. GURWINDER KAUR W/O SHRI HARMOHAN SINGH, D/O LATE SHRI HARINDER SINGH R/O VILLAGE RASANHERI, TEHSIL KHARAR, MOHALI.

5. DEVINDER KAUR W/O SHRI DHARAM SINGH, D/O LATE SHRI HARINDER SINGH, R/O VILLAGE CHHANJHERI, MOHALI, PUNJAB. (Workman)

AND

1. MANAGING DIRECTOR, M/S SECURITRANS INDIA PRIVATE LIMITED, REGD. OFFICE 10, DDA, COMMERCIAL COMPLEX, NANGAL RAYA, NEW DELHI —110 046.

2. REGIONAL MANAGER, NORTH, M/S SECURITRANS INDIA PRIVATE LIMITED, SCO NO. 907, 1ST FLOOR, NAC MANIMAJRA, UNION TERRITORY, CHANDIGARH. (Management)

#### AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was orally appointed by management No.2 as Gunman and joined his service under management No.2 on 25.04.2000 on monthly wages. There is no condition of service stipulating the terms and age of employment or any agreement between the management and the workman or workmen union. The workman had rendered his continuous regular services of more than 16 years with the management No.2 and has put in continuous regular service of more than 240 days in a calendar year preceding the date of illegal termination. Management No.2 orally terminated the services of the workman with effect from 20.04.2016 without any show cause notice or notice pay, without any charge sheet or any inquiry and without any retrenchment compensation. At the time of retrenchment, the workman was drawing ₹ 10,814/- per month wages. After illegal termination of the workman from his services, the management had appointed new hands. Juniors to the workman are still in services with the management. The management has not complied with the provisions of Section 25-F, 25-G & 25-N of the ID Act. Work & conduct of the workman during the course of his employment remained very satisfactory and no inquiry, charge sheet was ever issued or initiated during his employment or after illegal termination of services. The workman is unemployed since termination of his services and has no source of livelihood and is physically, mentally and medically fit to perform his duties. After illegal termination of services, the workman issued demand notice dated 29.04.2016 demanding his reinstatement with continuity of service with full back wages but the management did not accede to the request of workman. In pursuance to above demand notice, the conciliation proceedings before the Conciliation Officer-cum-Assistant Labour Commissioner, Chandigarh stand failed. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. The management contested the case of the workman and filed written statement raising preliminary objection that as per Clause 9 of the terms & conditions of appointment letter, Shri Harinder Singh (claimant) would superannuate on attaining the age of superannuation i.e. 58 years. The claimant having attained the age of 58 years stands superannuated. The claimant is not a 'workman' as defined in Section 2(s) of the ID Act. On merits, it is pleaded that the claimant was appointed as Gunman *vide* appointment letter dated 06.07.2013 with effect from 01.02.2012. The terms & conditions of the engagement were enumerated in the appointment. As per Clause 9 of the appointment letter the claimant was to superannuate on attaining the age of 58 years. The claimant was superannuated on attaining the age of 58 years. Job of Gunman requires young and energetic person so the age of 58 years was prescribed in the appointment letter. The claimant has put in about four years of service with the management and there is no illegal termination as alleged. The claimant retired on attaining the age of superannuation so question of issuing show cause notice or payment of notice pay, issuance of charge sheet or conducting or payment of retrenchment compensation does not arise. There was no requirement of compliance of provisions of Section 25-F, 25-G & 25-N of the ID Act as the claimant retired after attaining the age of superannuation. Other averments of the case of the claimant were denied and ultimately, it is prayed that the present industrial dispute be answered in negative.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer:-
  1. Whether Shri Harinder Singh is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
  2. Whether the services of Shri Harinder Singh were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
  3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1 but failed to appear for cross-examination due to his sudden demise. Thereafter the application for bring on record legal representatives of the deceased workman was filed, which was allowed. Shri Gurpreet Singh—Son of the deceased Shri Harinder Singh was examined as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Ajay Kumar Pandey—Manager (Industrial Relations) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

#### **ISSUE No. 1 :**

7. Onus to prove this issue was on the management and to discharge the same, learned representative for the management has examined Shri Ajay Kumar Pandey – Manager (Industrial Relations) as MW1, who simply deposed that the claimant is not a 'workman' as defined under the ID Act but during the course of evidence, nothing has been placed on record to prove that Shri Harinder Singh was having any supervisory or managerial powers as to exclude him from the definition of 'workman' as defined under Section 2(s) of the ID Act. There is no *iota* of evidence. Even during the course of arguments learned representative for the management has not pressed this issue. Accordingly, this issue is decided against the management.

#### **ISSUE No. 2 :**

8. Onus to prove this issue was on the workman and to discharge the same, learned representative for the workman has examined the son of the deceased workman as AW1, who deposed that his father was orally appointed by the management and joined his services under management No.2 as Gunman on 25.04.2000 on monthly wages. At the time of appointment or joining services no terms & conditions of service stipulating the terms and age of employment was settled or any agreement between the management and his father or workmen union was arrived. The management had orally shifted his father from A.P. Securitas Private Limited to Securitrans India Private Limited with effect from 01.02.2012. He further deposed that his father rendered his continuous regular service of more than 16 years with the management and had put in continuous regular services of more than 240 days in a calendar year preceding the date of illegal termination. Management No.2 orally terminated the services of his father with effect from 20.04.2016 without any notice or notice pay, without any charge sheet or inquiry and without any retrenchment compensation. At the time of illegal retrenchment, his father was drawing ₹ 10,814/- per month as wages. The management had joined new hands after illegal termination of his father and junior to his father are still in service. He also deposed that work & conduct of his father remained satisfactory in his entire employment and no notice or inquiry was ever initiated during employment of his father and his father was unemployed since termination of his services.

9. Learned representative for the workman has argued that the workman was appointed by the management as Gunman and joined his duty on 25.04.2000 on monthly wages. The workman has rendered continuous regular service of more than 16 years with management but management No.2 orally terminated the services of the workman on 20.04.2016 without any show cause notice, notice pay, without any charge sheet, inquiry, without any retrenchment compensation whereas junior of the workman are still in service. Hence, the management has not complied with the provisions of Section 25-F, 25-G and 25-N of the ID Act. It is further argued that the workman was unemployed till the date of his death. He prayed for allowing of the present industrial dispute.



10. On the other hand, learned representative for the management has examined Shri Ajay Kumar Pandey—Manager (Industrial Relations) as MW1, who deposed that he is working as Manager (Industrial Relations) with the management and is authorised to depose on behalf of the management by virtue of specific powers of attorney dated 22.08.2019 Exhibit 'R1'. Neither the reference is competent nor claim statement is maintainable. The terms of the engagement of the claimant clearly stipulate in the Clause 9 of the appointment that the claimant would superannuate on attaining the age of 58 years. The claimant having attained the said age stands superannuated so no grouse can be made by the claimant. Copy of appointment letter is Exhibit 'R2'. The claimant has put in about four years with the management and there is no illegal termination of service as alleged rather the claimant has superannuated. There is no violation of Section 25-F, 25-G and 25-N of the ID Act.

11. Learned representative for the management has argued that the workman has already attained the age of 58 years so his services were superannuated. There is no illegal termination of service of the workman as the workman has apprehended. Hence there is no violation of Section 25-F, 25-G and 25-H, 25-N of the ID Act. Learned representative for the management referred to the Industrial Employment (Standard Orders) Act, 1946. He prayed for dismissal of the industrial dispute.

12. After giving my carefully consideration to the rival contention of both the sides, admittedly the workman had joined as Gunman on 25.04.2000. As per allegations levelled by the workman, he has been terminated by the management No.2 without any notice, notice pay without any retrenchment compensation, show cause notice / inquiry, charge sheet whereas representative for the management vehemently argued that he has attained the age of 58 years. Learned representative for the management placed on record appointment letter, Column No.9 of the same is as under :—

*“9. You will be superannuated on attaining the age of 58 of years. You may retired if found medically unfit.”*

Moreover, it is admitted by AW1 during his cross-examination that before joining the management, his father was working in the Indian Army and he retired from the service in the year 1993. He admitted that his father was drawing service pension of ₹ 19,000/- from the Central Government and his date of birth was 25.04.1954. Meaning thereby it is crystal clear that he has already been attained age of 58 years and as per the Clause (3) of Schedule 1-B which deals with model standing orders, the age of retirement is 58 years, the same is reproduced as under:-

*“(3) Age of retirement.—The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement and superannuation shall be on completion of [58] years of age by the workman.”*

So no notice, inquiry, charge sheet etc. was required to issue to the workman. Thus, it is a simple case of superannuation after attaining the age of 58 not a case of termination. Further since the workman has already been expired so question of his reinstatement in service does not arise. However, the legal representative has liberty to approach the management for retiral benefits of the workman, as per law if applicable and the management is directed to settle his retirement benefits, if any. In the light of discussion made above, issue is decided against the workman and in favour of the management.

#### **RELIEF :**

13. In the light of findings on the issue No.2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(ANSHUL BERRY),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No.PB0095.

The 14.11.2019.

Secretary Labour,  
Chandigarh Administration.

## CHANDIGARH ADMINISTRATION

## LABOUR DEPARTMENT

**Order**

The 31st December, 2019

**No. 13/1/9699-HII(2)-2019/21416.**—Whereas the Central Government is of the opinion that an Industrial dispute exists between The President/General Secretary of Chandigarh Bottling Company Workers Union, Head Office at Cheema Bhawan, Sector 30-B, Chandigarh And (1) M/s Chandigarh Bottling Company, Plot No. 11, Industrial Area, Phase I, Chandigarh ; (2) M/s Chandigarh Bottling Company, Plot No. 177-F, Industrial Area, Phase I, Chandigarh regarding the matters hereinafter appearing ;

And whereas the Central Government considers it desirable to refer the dispute for adjudication ;

Now, therefore in exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, read with Government of India, Ministry of Labour's Notification No. S-11025/9/96-IR (PL), dated the 24th February, 1997, the undersigned hereby refers the matter specified below to the Industrial Tribunal and Labour Court, Union Territory, Chandigarh for adjudication :—

“Whether the demand raised in the demand notice dated 11.10.2017 by The President/General Secretary of Chandigarh Bottling Company Workers Union, Head Office at Cheema Bhawan, Sector 30-B, Chandigarh And (1) M/s Chandigarh Bottling Company, Plot No. 11, Industrial Area, Phase I, Chandigarh ; (2) M/s Chandigarh Bottling Company, Plot No. 177-F, Industrial Area, Phase I, Chandigarh, are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?”

Secretary Labour,  
Chandigarh Administration.

## Change of Name

I, Alokita, d/o Anup Kumar Sharma, w/o Kishor Bisht, # 2068, Sector 23-C, Chandigarh, have changed my name to Alokita Kishor Bisht, after marriage.

[82—1]

I, Surbhi Dang, w/o Varun Bhardwaj, d/o Anil Dang, r/o H. No. 3220, Sector 37D, Chandigarh, have changed my name after marriage from Surbhi Dang to Surbhi Varun Bhardwaj.

[83—1]

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